

2007 Special Instructions for Married Couples Where One Spouse is a Utah Non-resident

Utah State Tax Commission

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General Information

When a husband and wife file a joint federal return, they would normally be required to file a joint Utah return. However, when one spouse is a full-year Utah resident and the other spouse is a full-year nonresident, they may file using these Special Instructions.

If either spouse is a part-year Utah resident, the couple **cannot** file using these Special Instructions, but must prepare their Utah return using the same filing status as on their federal return.

Who May Use Special Instructions

A married person and his or her spouse may only use these Special Instructions if one of them is a full-year Utah resident and the other is a full-year nonresident.

Example 1:

Tom and Susan married in June of 2007 and live in Utah. Tom is a full-year Utah resident, but Susan lived in Arizona prior to their wedding. Both Tom and Susan have income from Utah sources. Tom and Susan **do not qualify** to use Special Instructions because Susan was a part-year Utah resident during the tax year. They must use the same filing status on their Utah tax return as they use on their federal tax return.

Example 2:

Doug moved to Utah in May of 2007. His wife, Marlene, lives in another state and does not plan to move to Utah. Doug and Marlene **do not qualify** to use Special Instructions until tax year 2008 because Doug was only a part-year resident in 2007. They must use the same filing status on both their federal and Utah tax returns. They will qualify for Special Instructions in 2008 if Doug is a full-year Utah resident and Marlene remains a nonresident during calendar year 2008.

Example 3:

Sally moved to Utah in 2006. Her husband, Brian, did not move to Utah until June 2007. Sally and Brian **do not qualify** to use Special Instructions for calendar year 2007 because Sally was a full-year resident but Brian was a part-year resident during the tax year.

When Military Personnel and Their Families are Subject to Utah Income Tax

The spouse of a person in active military service is generally considered, for Utah tax purposes, to have their military spouse's domicile and is subject to the same income tax laws and rules that apply to the military person.

Nonresidents who are stationed in Utah solely due to military orders are not subject to tax on their military pay in Utah. However, nonresident military personnel and members of their family who have earned income from Utah sources, other than active duty military service pay, are required to file a Utah tax return and pay any taxes due. (See additional instructions for military personnel in Pub 57.)

A military person and his or her spouse may only use these Special Instructions if one spouse is a full-year Utah resident and the other spouse is a full-year nonresident.

How to Calculate Utah Tax Using Special Instructions

Married couples that qualify to use Special Instructions and file a federal return as married filing joint may file Utah returns as married filing separate. If they file a joint federal return, both spouses must compute Utah taxable income "as if" their federal income had been computed separately, as follows. (Retain documentation of all computations with your records.)

1. Determine the "as if" federal adjusted gross income for each spouse. Divide any adjustments between the spouses in proportion to their respective incomes.
2. Allocate a portion of each Utah add-back item (lines 4b and 7 of TC-40) and deduction (lines 5a, 5b, 9a through 9c, and 9e of TC-40) to each spouse. Determine this allocation as follows:
 - a. Divide the "as if" federal adjusted gross income of each spouse by the actual federal adjusted gross income shown on their joint federal return. Round the resulting percentage to four decimal places.

- b. Multiply each Utah add-back item and deduction by the percentage calculated in "2-a" above. The allocable add-back items and deductions are:
 - Additions to income (line 4b of TC-40),
 - State income tax deducted as an itemized deduction on federal Schedule A (line 7 of TC-40),
 - State income tax refund included on the federal return (line 5a of TC-40),
 - Deductions from income (line 5b of TC-40),
 - Standard or itemized deductions (line 9a of TC-40),
 - Exemptions for dependents (line 9b of TC-40),
 - One-half the federal tax liability (line 9c of TC-40), and
 - Other deductions (line 9e of TC-40).
- c. The only items on the Utah return not allocated between the spouses' separate returns is his or her personal exemption (line 9b of TC-40) and the retirement exclusion/deduction (line 9d of TC-40).

Example: If the husband has 80 percent of the federal adjusted gross income, he may add-back or deduct 80 percent of each item listed in "2-b" above, but he may deduct 100 percent of his personal exemption and retirement exclusion/deduction. The wife would add-back or deduct 20 percent of each item listed in "2-b" above and deduct 100 percent of her personal exemption and retirement exclusion/deduction.
4. The amounts claimed on the Utah return, line 7 (state income tax deducted as a federal itemized deduction) and line 9a (itemized deductions) are limited if federal adjusted gross income exceeds \$78,200. (The standard deduction, if claimed on line 9a, is not subject to any limitation.) See IRS instructions for Schedule A if this limitation applies to either spouse.
5. Line 9b, personal exemptions deduction, is limited if federal adjusted gross income exceeds \$117,300. See Utah instructions for line 9b if this limitation applies to either spouse.
6. Complete the remainder of the Utah married-filing-separate return.
 - a. **Resident spouse** – Use the Utah taxable income on line 10 to calculate the Utah traditional income tax on line 12. Use the Utah modified adjusted gross income on line 6 to calculate the Utah single rate tax on line 13. Enter on line 14 the lesser of these two calculated taxes.
 - b. **Nonresident spouse** – Complete Utah form TC-40C to determine the income from Utah sources. Follow the instructions for line 15 of the return, "For Non or Part-year Residents Only," to calculate the portion of tax on line 14 that is the nonresident Utah tax for line 15.

A nonresident spouse with no Utah source income is not required to file a Utah return.

Example for Tax Year 2007:

Becky was a full-year resident of Utah before marrying Alex in December 2007. Becky had a dependent son by a previous marriage. Alex was a resident of Wyoming prior to the wedding. After their honeymoon, they returned to Utah and established residence in January 2008. They qualify to use Special Instructions because Becky was a full-year Utah resident and Alex was a full-year nonresident. Their combined federal adjusted gross income reported on their federal joint return was \$75,000, consisting of \$45,000 earned by Alex in Wyoming and \$30,000 earned by Becky in Utah. Dividing \$30,000 by \$75,000 equals .4000 or 40% to be used by Becky to allocate the different items on her separate Utah resident return.

Becky's Utah Resident Return	Joint Federal Return Form 1040	"As If" Joint Utah Return Form TC-40	Becky's Percentage Allocation	Becky's Separate Utah Form TC-40
Federal adjusted gross income (line 4a)	\$75,000	\$75,000		\$30,000
Additions to income (line 4b)		0	0.4000	0
State refund from line 10 of federal return (line 5a)		(25)	0.4000	(10)
Deductions from income (line 5b)		(0)	0.4000	(0)
Modified adjusted gross income (line 6)		74,975		29,990
State income tax deducted as itemized deduction (line 7)		0	0.4000	0
Standard or itemized deductions (line 9a)	(10,700)	(10,700)	0.4000	(4,280)
Alex's personal exemption (line 9b)	(3,400)	(2,550) *	.0000	0
Becky's personal exemption (line 9b)	(3,400)	(2,550) *	1.0000	(2,550)
Dependent son's exemption (line 9b)	(3,400)	(2,550) *	0.4000	(1,020)
One-half federal tax - 50% of 7,336 (line 9c)		(3,668)	0.4000	(1,467)
Becky's retirement exclusion/deduction (line 9d)		0	1.0000	0
Other deductions (line 9e)		0	0.4000	0
Utah taxable income (line 10)		52,957		20,673
Utah traditional tax calculated using married separate tax rates (line 12)				1,299
Utah single rate tax (line 13)				1,500
Lesser of traditional or single rate tax (line 14)				1,299

* State exemption for 2007 is \$2,550 (75% of federal exemption of \$3,400).

NOTE: Couples who qualify to use Special Instructions may use a different method of allocating add-back items and deductions than outlined in this publication, if that method more accurately reflects each spouse's separate Utah taxable income. Keep all documentation of your computations with a copy of your return.